

NYP Holdings, Inc. v Bowles Security Group, Inc.

2013 NY Slip Op 33332(U)

December 20, 2013

Sup Ct, New York County

Docket Number: 152430/2012

Judge: Joan A. Madden

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

**PRESENT: HON. JOAN A. MADDEN
*Justice***

PART 11

**NYP HOLDINGS, INC. and NEWS AMERICA
INCORPORATED,**

Plaintiffs,

INDEX NO. :152430/12

MOTION DATE :10-10-13

- v -

MOTION SEQ. NO.: 002

**BOWLES SECURITY GROUP, INC. and
ALLSTATE INSURANCE COMPANY,**

Defendants.

The following papers, numbered 1 to _____ were read on this motion to compel disclosure and cross motion to compel response to interrogatories.

NUMBERED

PAPERS

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits _____

—
Answering Affidavits — Exhibits _____

—
Replying Affidavits _____

Cross-Motion: Yes No

In this action, plaintiffs seek contractual indemnity from defendant Bowles Security Group, Inc. (“Bowles”) and its insurer defendant Allstate Insurance Company (“Allstate”) for expenses incurred by plaintiffs for the defense and settlement of claims arising out of three separate motor vehicle accidents involving employees of Bowles. Bowles was hired by plaintiff News America Incorporated to provide the services of certain Bowles employees to act as, *inter*

alia, receptionists, maintenance workers, and drivers for News America and its corporate affiliates, including plaintiff NYP Holdings, Inc (“NYP”). In its contract with News America, Bowles agreed to defend and indemnify plaintiffs and to provide automobile liability insurance for the benefit of plaintiffs. Bowles maintains that it obtained this coverage from Allstate.

In this motion, plaintiffs seek to compel the production of certain discovery and defendants oppose the motion and cross move to require plaintiffs to respond to certain interrogatories. While the motion was pending, the majority of the discovery disputes raised by the parties were resolved and defendants withdrew their cross motion.

The remaining issue concerns plaintiffs’ request in item 10 of their Notice of Discovery dated August 27, 2012, that Allstate produce its “entire underwriting and claim files” concerning the motor vehicle accidents at issue in this action (i.e, the Nicolau Action, Rosario Action, Diakite Action, and the Jackson Action).

Defendants counter that the underwriting and claims files are privileged, that disclosure of the files would compromise their ability to defend the underlying actions, and that the files are no longer relevant as Allstate has now agreed to defend and indemnify NYP in connection with the Nicolau, Rosario, and the Diakite Actions. Defendant Allstate has not stated its position with respect to the Jackson Action. Plaintiffs contends Allstate has not responded to its request to defend and indemnify it in connection with the Jackson action.

CPLR 3101(a) provides that “[t]here shall be full disclosure of all evidence material and necessary in the prosecution or defense of an action.” The words “material and necessary” are “liberally interpreted to require disclosure, upon request, of any facts bearing on a controversy which will assist in sharpening the issue at trial.” Roman Catholic Church of Good Shepherd v. Tempco Systems, 202 AD2d 257, 258 (1st Dept 1994). Disclosure is thus not limited to “evidence directly related to the issues in the pleadings.” Allen v. Crowell-Collier Publishing Co., 21 NY2d 403, 408 (1968). In light of “the strong public policy favoring full disclosure,” plaintiff has the burden of proving each element of a privilege. Spectrum Systems Intern’l Corp. v. Chemical Bank 157 A.D.2d 444,447 (1st Dept 1990), aff’d as modified, 78 N.Y.2d 371 (1991).

While an insurer’s claims file is generally immune from disclosure (Kandel v. Tocher, 22

AD2d 513, 515 [1st Dept 1965]), the immunity does not apply when the file is sought by the insured suing its insurer in connection with an underlying claim. See Woodson v. American Transit Insurance Co., 280 AD2d 328 (1st Dept 2001); Paramount Ins. Co. v. Eli Construction General Contr., 159 AD2d 447 (1st Dept 1990). Here, as NYP is an additional insured under Allstate's policy issued to Bowles, and this action seeks relief in connection with the underlying claims, the underwriting and claims files are discoverable.

As for defendants' argument that its agreement to defend NYP in the actions renders plaintiffs' request for the claims files irrelevant, the court notes that, in the case of the Nicolau, Rosario, and the Diakite Actions, plaintiffs seeks to recover damages for expenses incurred before Allstate agreed to defend, without reservation, the actions on NYP's behalf which, from the complaint, appears to be in June 2010, and plaintiffs are entitled to the underwriting and claims files in those actions for the period prior to the time that Allstate notified plaintiffs that it would defend and indemnify them.

As for the Jackson Action, the complaint alleges that Allstate is continuing to deny coverage, and while this motion was pending, by order and judgment dated November 1, 2013, the court granted, in the absence of opposition, plaintiffs' motion for summary judgment on their eighth cause of action and declared that Allstate is obligated to defend and indemnify plaintiffs in the Jackson Action. Plaintiffs are thus entitled to discovery of the claims files in the Jackson Action, until the date Allstate notified plaintiffs that it would defend and indemnify plaintiffs in the action.

Next, defendants' unsubstantiated argument that producing the files at issue would interfere with their ability to defend the underlying actions does not provide a basis for denying plaintiffs discovery.

However, since the claims files contain information which may be privileged with respect to Bowles, Allstate is to provide a privilege log only with regard to claims of privilege relating to Bowles and to submit the claims files for in-camera inspection of only allegedly privileged information.


Accordingly, it is

ORDERED that the status conference scheduled for January 16, 2014 is adjourned to

January 30, 2014, on which date Allstate shall produce for in camera inspection, (1) the claims files in the Nicolau, Rozario, and Diakite Actions for the period prior to Allstate's notice to plaintiffs of its intent to defend and indemnify NYP in these actions, and (2) the claims file in the Jackson Action for the period prior to Allstate's notice to plaintiffs of its intent to defend and indemnify NYP, and provide a privilege log to the extent Allstate is claiming that any information is privileged with respect to Bowles; and it is further

ORDERED that the cross motion has been withdrawn and is therefore denied as moot.

Dated: December 20, 2013



J.S.C.

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION